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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Request for Review of the Decision of)
the Universal Service Administrator by)Little River Unified School District 444)
Little River, Kansas)

Federal-State Joint Board on Universal Service)

Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-182902

CC Docket No. 96-45

CC Docket No. 97-21✓

ORDER

Adopted: August 24, 2001**Released: August 27, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by the Little River Unified School District 444 (Little River), Little River, Kansas, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Little River seeks review of SLD's denial of its application for discounts for Internet access under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Little River's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Milt Dougherty, Little River Unified School District, to Federal Communications Commission, filed January 29, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

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technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. Applicants may only seek support for eligible services.⁶ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT FOR INELIGIBLE SERVICES."⁷ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."⁸ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute more than thirty percent of the total.⁹ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

4. Little River filed a FCC Form 471 requesting discounts for Internet service to be

⁴ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.504 *et seq.*

⁷ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (September 1999), at 18 (FCC Form 471 Instructions).

⁸ FCC Form 471 Instructions at 23.

⁹ See *Request for Review of the Decision of the Universal Service Administrative Company by Ubly Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 23267 (Com. Car. Bur. rel. 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. rel. 2000). The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If less than 30 percent of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

provided by Twotrees Technologies, LLC (TwoTrees).¹⁰ SLD denied Little River's funding request on April 14, 2000.¹¹ SLD explained that 30% or more of the Funding Request Number (FRN) included a request for management fees (including a firewall server, filtering and monitoring), which SLD determined were ineligible services based on the program rules.¹² Little River then filed an appeal with SLD.¹³ By letter dated January 10, 2001, SLD affirmed its original funding decision.¹⁴ SLD again explained that program procedures provide that if 30% or more of the applicant's funding request includes ineligible services, the funding request must be denied.¹⁵ SLD further concluded that more than 30% of FRN 376024 requested funding for management of the vendor's equipment and that these were management fees not eligible for discounts under the program's rules.¹⁶

5. In response, Little River filed the instant Request for Review with the Commission.¹⁷ Little River states that the services requested in FRN 376024 include costs associated with bundled access to the Internet, not management fees.¹⁸ Referencing the *Universal Service Order*, Little River asserts that the management provided by Twotrees is eligible for discounts if offered by the Internet service provider and that e-mail service bundled with internet access is eligible for funding.¹⁹ Little River also asserts that it selected Twotrees as its service provider because Twotrees offered the most cost-effective means of securing non-content Internet access, despite the bundled nature of their service.²⁰ Little River maintains that

¹⁰ FCC Form 471, Little River Unified School District, filed January 17, 2000 (Little River FCC Form 471).

¹¹ Letter from Schools and Libraries Division, Universal Service Corporation to Fred Howie, Little River Unified School District, dated April 14, 2000 (Funding Commitment Decision Letter).

¹² *Id.*

¹³ Letter from Fred Howie, Little River Unified School District, to Schools and Libraries Division, Universal Service Corporation, filed May 12, 2000.

¹⁴ Letter from Schools and Libraries Division, Universal Service Corporation to Fred Howie, Little River Unified School District, January 10, 2001 (Administrator's Decision on Appeal).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Request for Review.

¹⁸ *Id.*

¹⁹ *Id.* See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9014, para. 444-47 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000); 47 C.F.R. § 54.503.

²⁰ Waiver Request.

failure to grant its funding request would be discriminatory because other districts in the area have been approved for the “exact same service from the exact same provider.”²¹

6. We have reviewed the record before us and conclude that SLD properly denied discounts to Little River. The *Universal Service Order* provides: “we solve the problem of bundling content and “conduit” (access) to the Internet by not permitting schools and libraries to purchase a package including content and conduit, unless the bundled package included minimal content and provided the most cost-effective means of securing non-content access to the Internet...”²² Since at least March 27, 1998, network management and monitoring systems have been clearly identified on SLD’s website as ineligible.²³ The March 27, 1998 ineligible services list on the SLD website defined network management services as “[a] system of equipment used in monitoring, controlling, and managing a data communications network.”²⁴

7. The documentation that Little River provided as part of its FCC Form 471 supports SLD’s determination that more than 30% of FRN 376024 requested discounts for ineligible network management services.²⁵ The documentation also contradicts Little River’s claim that Twotrees’ bill failed to list network management fee as a separate item.²⁶ With its FCC Form 471, Little River attached a copy of a quote prepared by Twotrees that stated Twotrees would provide a frame relay network and would provide unlimited internal and external web page space, filtering, monitoring, and domain name service management.²⁷ The total price of the service provided by Twotrees was listed at \$22,000.00 per year with \$10,000.00 of this fee for “yearly district management fees.”²⁸

²¹ *Id.*

²² 12 FCC Rcd 8776, 9014, para. 445 (emphasis added). We note that Little River provides no specific information in support of its assertion that other applicants have received discounts for the same service from the same provider. Moreover, even if Little River could demonstrate that other applicants had received discounts for the “exact same service from the exact same provider,” the erroneous provision of discounts to other applicants in contravention of the program’s rules and policies would not be determinative of Little River’s application for discounts, to the extent that it seeks support for ineligible services.

²³ See SLD web site, Eligible Services List (March 27, 1998) <<http://www.sl.universalservice.org/reference/eligible.asp>>. Little River filed its FCC Form 471 in January, 2000, almost two years after network management and monitoring systems were designated as ineligible systems. See Little River FCC Form 471, filed January 17, 2000.

²⁴ See *id.*

²⁵ Little River FCC Form 471, attachment (describing Twotree’s Internet service).

²⁶ Waiver Request.

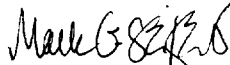
²⁷ Little River FCC Form 471.

²⁸ *Id.*

8. Network monitoring is not a telecommunications service under the rules of the program, because network monitoring is not necessary to the transmission of information.²⁹ Nor is network monitoring eligible as an Internet access service, because it is not necessary to provide conduit access to the Internet.³⁰ Similarly, network monitoring is not eligible as the installation and maintenance of internal connections, because it is not "necessary to transport information all the way to individual classrooms."³¹ In sum, network monitoring is not an eligible service under program rules. Thus, SLD properly applied the 30% rule in denying Little River's funding request. We, therefore, deny Little River's Request for Review.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by the Little River Unified School District 444, Little River, Kansas, on January 29, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

²⁹ See 47 C.F.R. §§ 54.5, 54.502; 47 U.S.C. § 153(43).

³⁰ *Universal Service Order*, 12 FCC Rcd 8776, 9008, para. 436.

³¹ *Id.* at 9021, para. 459; 47 C.F.R. § 54.503.